

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

TERRY LEE CALLENDRET,

Plaintiff,

v.

T. THRASHER, et al.,

Defendants.

CASE NO. 3:19-CV-5271-BHS-DWC

ORDER DENYING MOTION FOR  
COURT-APPOINTED COUNSEL

The District Court referred this 42 U.S.C. § 1983 action to United States Magistrate Judge David W. Christel. On June 3, 2020, Plaintiff Terry Lee Callendret filed “Plaintiff’s Response to Defendants Motion to my Summary Judgment/and a Request for a Signed Attorney” (“Motion”). Dkt. 62. In the Motion, Plaintiff responded to Defendant’s Response to Plaintiff’s Motion for Summary Judgment and, in his conclusion, requested Court-appointed counsel. *See id.* at p. 3.

No constitutional right to appointed counsel exists in a § 1983 action. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981); *see United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995) (“[a]ppointment of counsel under this section is

1 discretionary, not mandatory”). However, in “exceptional circumstances,” a district court may  
2 appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28  
3 U.S.C. § 1915(d)). *Rand v. Roland*, 113F.3d 1520, 1525 (9th Cir. 1997), *overruled on other*  
4 *grounds*, 154 F.3d 952 (9th Cir. 1998). To decide whether exceptional circumstances exist, the  
5 Court must evaluate both “the likelihood of success on the merits [and] the ability of the  
6 [plaintiff] to articulate his claims *pro se* in light of the complexity of the legal issues involved.”  
7 *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (*quoting Weygandt v. Look*, 718  
8 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead facts showing he has an insufficient grasp  
9 of his case or the legal issues involved and an inadequate ability to articulate the factual basis of  
10 his claims. *Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th Cir. 2004).

11 In Plaintiff’s Motion, he requests a Court-appointed attorney because he lacks legal  
12 knowledge. Dkt. 62, p. 3. He states he has a strong case and cannot fight this case himself unless  
13 he is required. *Id.*

14 Plaintiff has not shown, nor does the Court find, this case involves complex facts or law.  
15 Plaintiff has also not shown he is likely to succeed on the merits of his case or shown an inability  
16 to articulate the factual basis of his claims in a fashion understandable to the Court. For example,  
17 Plaintiff clearly articulated his claims in his Amended Complaint and various documents filed  
18 with the Court. *See* Dkt. 27, 48, 57. Moreover, the Court has considered Defendants’ Motion for  
19 Summary Judgment, Plaintiff’s Motion for Summary Judgment, and the relevant evidence and  
20 has recommended the District Judge assigned to this case grant Defendants’ Motion for  
21 Summary Judgment and close this case. Therefore, Plaintiff has not shown he is likely to succeed  
22 on the merits of this case.

1 The Court also notes “Plaintiff’s incarceration and limited access to legal materials are  
2 not exceptional factors constituting exceptional circumstances that warrant the appointment of  
3 counsel. Rather, they are the type of difficulties encountered by many pro se litigants.” *Dancer v.*  
4 *Jeske*, 2009 WL 1110432, \*1 (W.D. Wash. Apr. 24, 2009). While Plaintiff may be able to better  
5 litigate this case with appointed counsel, that fact, alone, does not establish an extraordinary  
6 circumstance warranting the appointment of counsel. *See Rand*, 113 F.3d at 1525; *Wilborn*, 789  
7 F.2d at 1331.

8 For these reasons, the Court finds Plaintiff has failed to show the appointment of counsel  
9 is appropriate at this time. Accordingly, Plaintiff’s Motion (Dkt. 62) is denied.

10 Dated this 2nd day of July, 2020.

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13 David W. Christel  
14 United States Magistrate Judge  
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